

(f) *Consultation with Other Agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities and the appropriate home country supervisor(s) of the foreign bank.

**§ 225.94 What are the consequences of an insured branch or depository institution failing to maintain a satisfactory or better rating under the Community Reinvestment Act?**

(a) *Insured branch as an “insured depository institution.”* A U.S. branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation shall be treated as an “insured depository institution” for purposes of § 225.84.

(b) *Applicability.* The provisions of § 225.84, with the modifications contained in this section, shall apply to a foreign bank that operates an insured branch referred to in paragraph (a) of this section or an insured depository institution in the United States, and any company that owns or controls such a foreign bank, that has made an effective election under § 225.92 in the same manner and to the same extent as they apply to a financial holding company.

INTERPRETATIONS

**§ 225.101 Bank holding company’s subsidiary banks owning shares of nonbanking companies.**

(a) The Board’s opinion has been requested on the following related matters under the Bank Holding Company Act of 1956.

(b) The question is raised as to whether shares in a nonbanking company which were acquired by a banking subsidiary of the bank holding company many years ago when their acquisition was lawful and are now held as investments, and which do not include more than 5 percent of the outstanding voting securities of such nonbanking company and do not have a value greater than 5 percent of the value of the bank holding company’s total assets, are exempted from the divestment requirements of the Act by the provisions of section 4(c)(5) of the Act.

(c) In the Board’s opinion, this exemption is as applicable to such shares

when held by a banking subsidiary of a bank holding company as when held directly by the bank holding company itself. While the exemption specifically refers only to shares held or acquired by the bank holding company, the prohibition of the Act against retention of nonbanking interests applies to indirect as well as direct ownership of shares of a nonbanking company, and, in the absence of a clear mandate to the contrary, any exception to this prohibition should be given equal breadth with the prohibition. Any other interpretation would lead to unwarranted results.

(d) Although certain of the other exemptions in section 4(c) of the Act specifically refer to shares held or acquired by banking subsidiaries, an analysis of those exemptions suggests that such specific reference to banking subsidiaries was for the purpose of excluding nonbanking subsidiaries from such exemptions, rather than for the purpose of providing an inclusionary emphasis on banking subsidiaries.

(e) It should be noted that the Board’s view as to this question should not be interpreted as meaning that each banking subsidiary could own up to 5 percent of the stock of the same nonbanking organization. In the Board’s opinion the limitations set forth in section 4(c)(5) apply to the aggregate amount of stock held in a particular organization by the bank holding company itself and by all of its subsidiaries.

(f) Secondly, question is raised as to whether shares in a nonbanking company acquired in satisfaction of debts previously contracted (d.p.c.) by a banking subsidiary of the bank holding company may be retained if such shares meet the conditions contained in section 4(c)(5) as to value and amount, notwithstanding the requirement of section 4(c)(2) that shares acquired d.p.c. be disposed of within two years after the date of their acquisition or the date of the Act, whichever is later. In the Board’s opinion, the 5 percent exemption provided by section 4(c)(5) covers any shares, including shares acquired d.p.c., that meet the conditions set forth in that exemption, and, consequently, d.p.c. shares held by a banking subsidiary of a bank holding